

STAFF REPORT

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PROPOSED COUNTY CODE AMENDMENT

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PROPOSED PFM AMENDMENT

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APPEAL OF DECISION

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WAIVER REQUEST

Proposed amendments to the map of Chesapeake Bay Preservation Areas, Chapter 118 (Chesapeake Bay Preservation Ordinance) of The Code of the County of Fairfax, Virginia RE: Resource Protection Area Boundaries.

Authorization to Advertise

July 10, 2006

Planning Commission Hearing

September 13, 2006 at 8:15 p.m.

Board of Supervisors Hearing

September 25, 2006 at 4:30 p.m.

Prepared by:

Code Analysis Division
JAF (703) 324-1720

July 10, 2006

STAFF REPORT

A. Issues:

Proposed amendments to the map of Chesapeake Bay Preservation Areas, Chapter 118 (Chesapeake Bay Preservation Ordinance) of *The Code of the County of Fairfax, Virginia*. The proposed amendments revise the Resource Protection Area boundaries on the adopted map of Chesapeake Bay Preservation Areas. There are no proposed amendments to the text of the Chesapeake Bay Preservation Ordinance.

B. Recommended Action:

Staff recommends that the Board of Supervisors adopt the proposed amendments to the map of Chesapeake Bay Preservation Areas. Staff further recommends that the Board adopt by separate resolution the Policy for Treatment of Approved and Pending Plans of Development for plans impacted by the amendments.

C. Timing:

Board of Supervisors authorization to advertise – July 10, 2006

Planning Commission Public Hearing – September 13, 2006 at 8:15 p.m.

Board of Supervisors Public Hearing – September 25, 2006 at 4:30 p.m.

Effective Date – 12:01 a.m. September 26, 2006

D. Source:

Department of Public Works and Environmental Services

E. Coordination:

The proposed amendments have been prepared by the Department of Public Works and Environmental Services (DPWES) and coordinated with the Office of the County Attorney.

F. Background:

Section 118-1-9(a) of the Chesapeake Bay Preservation Ordinance requires that there be a map of Chesapeake Bay Preservation Areas adopted by the Board. Chesapeake Bay Preservation Areas include both Resource Protection Areas (RPAs) and Resource Management Areas (RMAs). RPAs are required to be

designated around all water bodies with perennial flow. Because the ordinance, as adopted, requires that a stream be both perennial and depicted on the map as perennial to be subject to regulation as a water body with perennial flow, newly identified perennial streams must be added to the map to have RPAs designated around them.

On July 11, 2005, and December 5, 2005, the Board adopted amendments to the Map of Chesapeake Bay Preservation Areas depicting perennial streams and revised RPA boundaries. The perennial streams and revised RPA boundaries were based on a Quality Assurance/Quality Control (QA/QC) study conducted by the Department of Public Works and Environmental Services (DPWES) that included both field work and a review of the existing map product for cartographic errors. The field work for the QA/QC study was performed during the summer of 2004. Results of the QA/QC study were included as part of the public hearing package. The proposed amendments to map pages no. 30-2 and 41-1 follow-up on information that was brought forth during the adoption process for the 2005 map amendments. The proposed amendment to map page no. 91-4 is the result of a field review conducted by staff in the course of reviewing a rezoning application (RZ 2006-LE-009) for the properties at 7137, 7151, and 7155 Telegraph Road [Tax Map: 91-1((1)) lots 43, 44, and 45].

G. Proposed Amendments:

Pathfinder Lane:

The perennial stream designation and associated RPA along a stream segment east of and generally parallel to Pathfinder Lane on map sheet no. 30-2 was originally adopted in 2003. The designation of the perennial stream and the width of the RPA were challenged by the property owner residing at 1403 Pathfinder Lane at the June 16, 2005, Planning Commission public hearing. DPWES staff conducted site visits to observe stream flow conditions and evaluate potential wetlands on June 25, 2005, and June 27, 2005. At the time of both visits, the stream was observed to be flowing. Published U.S. Drought Monitor reports show that conditions were abnormally dry. Based on a field review of the soils and vegetation, staff determined that there were no potential wetlands and that the RPA buffer should be reduced to the minimum 100 feet from the upstream limit of the perennial stream at Pathfinder Lane downstream to Old Dominion Drive. Because changes to the RPA were not included as part of the advertised amendments, a revision to the map was not possible at that time. DPWES staff agreed to prepare a study for an administrative change to the width of the RPA at a future date and that staff would perform a further review of the designation of the stream as perennial if notified by the property owner that water had stopped flowing in the stream. A letter was mailed to the property owner on August 19, 2005, advising the owner how to contact DPWES to initiate a site visit if and when he observed the stream without flow. DPWES was contacted by the property owner on October 4, 2005. However, the region was experiencing a moderate drought at the time and a site visit was not conducted. Stream flow observations under these conditions are not valid for reclassifying a stream from

perennial to intermittent. No further reports of the absence of stream flow were reported by the property owner. In lieu of the administrative study, DPWES staff has prepared an amendment to the map depicting the reduced RPA width.

Overbrook Street (a.k.a. Crimmins Lane):

The designation of the perennial stream and associated RPA along a stream segment north of and parallel to Overbrook Street on map sheet no. 41-1 was challenged by property owners residing at 6450 and 6456 Overbrook Street at the July 11, 2005, Board public hearing. The Board deferred decision on adoption of the proposed amendments to map page no. 41-1 until December 5, 2005, so that the proposed perennial stream designation and RPA along Overbrook Street could be further evaluated based on direct observations of flow during the dry season that normally occurs in late summer through early fall. Letters were mailed to the two property owners on August 19, 2005, reminding them of the conditions for revising the proposed map and advising them how to contact DPWES to initiate a site visit if and when they observed the stream without flow. The property owners were also advised that the proposed map depicting the stream as perennial and its associated RPA would be brought back to the Board for adoption on December 5, 2005, if the stream did not stop flowing during the summer or fall. DPWES was not contacted by the property owners.

DPWES staff conducted site visits to observe stream flow conditions on August 24, 2005, and September 26, 2005. At the time of both visits, the stream was observed to be flowing. Published U.S. Drought Monitor reports show that conditions were abnormally dry or in drought for the period beginning on September 6, 2005, through October 4, 2005. At the time of the September 26, 2005, site visit, the U.S. Drought Monitor reported that the area was experiencing a moderate drought. The observed stream flow under drought conditions is conclusive proof that the stream is perennial. Flow was actually observed in the stream all the way up to the road crossing at Powhatan Street, approximately 750 feet upstream of the end point depicted on the advertised map. Because this additional stream segment was not included in the advertised amendments, it could not be added at that time. The Board adopted the advertised map and Supervisor DuBois requested that staff include the additional stream segment in the next package of map amendments.

Telegraph Road:

Four separate stream segments are proposed for reclassification as perennial streams. The longest stream segment proposed for reclassification as a perennial stream begins on the rear of the property at 7112 Roxann Road, flows under Telegraph Road through a culvert, and ends behind the property at 7218 Wickford Drive, where it enters a 60 inch diameter storm drain pipe. The 60 inch diameter pipe eventually outfalls into a concrete channel in Wickford Park. The channel has been mapped as a perennial stream and a new RPA has been designated around a short segment of the concrete channel that is located outside of the existing RPA designated around Dogue Creek. Two smaller stream segments begin as springs on the rear of the properties at 7151 and 7155 Telegraph Road and flow short

distances to storm drain inlets. These stream segments were not previously studied because the stream channels are not depicted on County maps. The site was visited by DPWES staff on March 14, 2006, and June 15, 2006, evaluated using the approved protocol for identification of perennial streams, and determined to be perennial. Review of this stream segment for a possible map amendment was requested by Supervisor Kauffman.

Additional details on the field investigations for all of the proposed map amendments are attached.

H. Regulatory Issues:

The proposed amendments will facilitate administration of the Chesapeake Bay Preservation Ordinance by providing a more accurate depiction of the extent of RPAs in Fairfax County. Properties along a stream that has been reclassified as perennial will be subject to additional regulatory requirements associated with RPA areas that may limit development opportunities on affected properties. At the time of adoption of prior amendments to the Map of Chesapeake Bay Preservation Areas, the Board adopted policies for the treatment of approved and pending plans of development with respect to said amendments to be administered by the Director of DPWES. Staff recommends that the Board provide similar consideration for the treatment of approved and pending plans of development affected by the proposed revisions to map sheets no. 41-1 and 91-4. The affected properties are zoned residential and are not subject to any approved rezonings, special exceptions, special permits, or variances. Because the change to the RPA boundary on map sheet 30-2 is a reduction in the width of the RPA, those properties do not need to be addressed by the policy. It is noted that policies adopted by the Board for the treatment of approved and pending plans of development for prior amendments to the map of Chesapeake Bay preservation Areas did not include any consideration for rezoning applications that were submitted but not yet approved. The proposed Policy for the Treatment of Approved and Pending Plans of Development has been prepared to address the general conditions applicable to the affected properties and will mitigate the impact of the amendments on by-right developments currently under review or construction. In addition to the standard legal advertisements, a separate notice of the public hearings will be mailed to all property owners affected by the proposed amendments.

I. Attached Documents:

Field Investigation Reports

Map of Chesapeake Bay Preservation Areas

Board Policy for Treatment of Approved and Pending Plans of Development Affected by the September 25, 2006, Revisions to the Map of Chesapeake Bay Preservation Areas.